



Use of contractors



a joint responsibility

The words 'client' and 'contractor' are used throughout this leaflet. For the purposes of this leaflet, client means any employer in the public or private sector who uses contractors. Contractor means anyone brought in by a client to work at the client's premises who is not an employee of the client. However, the guidance in this leaflet does not apply to agency or mobile workers (HSE will issue separate guidance about these workers later). Nor does it apply to deliveries to the client's premises or work activities covered by the Construction (Design and Management) Regulations 1994 (CDM). Where CDM applies, clients, contractors and others have specific legal responsibilities.

INTRODUCTION

This leaflet is aimed at situations where clients use contractors. It clarifies the general health and safety responsibilities of clients and contractors to protect each other, their workforce and anyone else (eg visitors, people living nearby and other members of the public). These responsibilities, if not properly managed, can lead to events that could prove costly to all parties. The leaflet includes case studies showing what can happen when things go wrong. As well as the immediate effects, further consequences can arise from delays to the work and claims for damages. All parties must co-operate to ensure that health and safety is properly managed - this will avoid things going wrong in the first place.

Use of contractors

YOUR RESPONSIBILITIES

Work undertaken for a client by a contractor is usually covered by a civil contract. It is good practice for health and safety requirements to be written in to such a contract. However, health and safety responsibilities are defined by the criminal law and cannot be passed on from one party to another by a contract.

In any client/contractor relationship, **both parties** will have duties under health and safety law. Similarly, if the contractor employs sub-contractors to carry out some or all of the work, all parties will have some health and safety responsibilities. The extent of the responsibilities of each party will depend on the circumstances.

Key message:

Both parties will have duties under health and safety law

Contractors provided a scaffold onto a fragile, unfenced roof, which was 10 m off the ground, so that a new leak testing technique requiring access to a roof vent could be tested. An operator walked onto the roof and fell to his death through a fragile vent. The client was found guilty and fined £27 000 plus costs for failing to provide adequate information and supervision. The contractor was found guilty and fined £3000 plus costs for failing to implement straightforward controls and safeguards.

WHAT YOU NEED TO DO

Identify the job

Clients need to clearly identify all aspects of the work they want the contractor to do, including work falling within the preparation and completion phases. The level of risk will depend on the nature of the job. Whatever the risk, clients need to consider the health and safety implications of the job they want done. This will involve selecting someone suitable to do the job, assessing the risks, deciding what information, instruction and training is required, how co-operation and co-ordination between all parties is achieved, how the workforce is to be consulted and the level of management and supervision required.

Select a suitable contractor

Clients need to satisfy themselves that contractors are competent (ie they have sufficient skills and knowledge) to do the job safely and without risks to health and safety. The degree of competence required will depend on the work to be done. Make sure contractors know and understand what performance you expect. Explain your health and safety arrangements to them. Show them your procedures, permit systems, health and safety policy statement and make sure they understand and will act in accordance with it.

Use of contractors

You need to decide how you will determine a contractor's competence. You could, for example, ask prospective contractors:

- ▼ what experience they have in the type of work you want done;
- ▼ what their health and safety policies and practices are;
- ▼ about their recent health and safety performance (number of accidents etc);
- ▼ what qualifications and skills they have;
- ▼ their selection procedure for sub-contractors;
- ▼ for their safety method statement;
- ▼ what health and safety training and supervision they provide;
- ▼ their arrangements for consulting their workforce;
- ▼ if they have any independent assessment of their competence;
- ▼ if they are members of a relevant trade or professional body; or
- ▼ whether they or their employees hold a 'passport' in health and safety training.

This is a growing trend in some industries.

You can then decide how much evidence (eg references) you need to seek in support of what prospective contractors have told you.

Use of contractors

Select a suitable sub-contractor

The selection of any sub-contractors is probably best left to the contractor. Clients must, however, satisfy themselves that a contractor has an effective procedure for appraising the competence of a sub-contractor. When selecting a suitable sub-contractor, a contractor may use some or all of the criteria that a client may use in selecting a suitable contractor (see above). Again, the degree of competence required will depend on the work to be done.

Key messages:

Check the competency / co-operation

A contractor was engaged to repair an escalator in retail premises. The work was sub-contracted. During the work, the escalator unexpectedly set off trapping the worker's foot under the comb plate. Part of the worker's foot was amputated. The contractor was prosecuted for failing to check the competency of the sub-contractor and failing to co-operate with the sub-contractor. The contractor was found guilty and fined £4000 plus costs. The sub-contractor was prosecuted for failing to check the competency of the persons carrying out the work. The sub-contractor was found guilty and fined £5000 plus costs.

Use of contractors

Assess the risks of the work

A risk assessment must be done and both the client and contractor should be party to it. HSE's free leaflet Five steps to risk assessment provides guidance to employers and the self-employed on assessing risks in the workplace.

The client should already have a risk assessment for the work activities of their own business. The contractor must assess the risks for the contracted work and then both parties must get together to consider those risks from each other's work that could affect the health and safety of the workforce or anyone else. The client and the contractor need to agree the risk assessment for the contracted work and the preventative and protective steps that will apply when the work is in progress. If sub-contractors are involved, they should also be part of the discussion and agreement.

Key message: **Do a risk assessment**

A self-employed electrical contractor was injured while working at a client's premises when a fork-lift truck struck and dislodged the ladder he was working from. The client was prosecuted because no risk assessment had been made nor any steps put in place to ensure the contractor's safety. The client was found guilty and fined £9000 plus costs.

Use of contractors

Provide information, instruction and training

Clients, contractors and sub-contractors must provide their employees with information, instruction and training on anything which may affect their health and safety. HSE's free leaflet Health and safety training. What you need to know sets out what you need to do.

All parties need to consider what information should be passed between them and agree appropriate ways to make sure this is done. They need to exchange clear information about the risks arising from their operations, including relevant safety rules and procedures, and procedures for dealing with emergencies. This exchange of information should include details of any risks that other parties could not reasonably be expected to know about. The information must be specific to the work.

In other words, you must talk to one another.

Key message: **Provide information**

A client was prosecuted for failing to provide information to a contractor working on ceiling tiles in the foyer of an occupied tower block. Unknown to the contractor, the ceiling tiles contained asbestos and were removed in an uncontrolled manner, placing the contractor and occupants at risk. The client was found guilty and fined £35 000 plus costs.

Use of contractors

The instruction and training provided by the client, the contractor and the sub-contractor needs to take account of the risks from their own and each other's work.

Co-operation and co-ordination

In any client/contractor relationship, there must be co-operation and co-ordination between all the parties involved, to ensure the health and safety of all at the workplace and anyone else likely to be affected. The client should set up liaison arrangements with all parties. This could take the form of regular meetings or briefings. Liaison is particularly important where variations of the work are proposed or where more than one contractor or sub-contractor is engaged.

Consulting the workforce

Clients, contractors and sub-contractors must consult their employees on health and safety matters. Where there are recognised trade unions, consultation should be through safety representatives appointed by the unions. Trade unions have an important role to play and can provide expertise to help in the area of health and safety. Where there is no recognised trade union, different arrangements will have to be made eg through representatives elected by their employees. However the workforce is represented, they should be part of the liaison arrangements set up by the client and should be involved from the outset.

Use of contractors

Management and supervision

Clients must decide what they need to do to effectively manage and supervise the work of contractors. The more impact the contractor's work could have on the health and safety of anyone likely to be affected, the greater the management and supervisory responsibilities of the client. Clients will also have greater management and supervisory responsibilities where they know more about the health and safety implications of the contracted work than the contractor. In all circumstances, clients need sufficient knowledge and expertise to manage and supervise the contracted work. It is essential that the nature of the controls exercised by the client is agreed before work starts. An important part of this is the arrangements for the selection and control of any sub-contractors.

Clients may need to agree with the contractor how the work will be done and the precautions that will be taken. Again, the extent of the client's responsibilities will be determined by the impact that the contractor's work could have on anyone likely to be affected. Relevant issues include:

- ▼ what equipment should or should not be worked on/used;
- ▼ personal protective equipment to be used and who will provide it;
- ▼ working procedures, including any permits-to-work;

Use of contractors

- ▼ the number of people needed to do the job;
- ▼ reporting of accidents and safekeeping of records and plans.

Clients, contractors and sub-contractors should monitor their health and safety performance. This means checking whether the risk assessment is up to date and that control measures are working. The level of monitoring depends on the risks - the greater the risks, the greater the monitoring. Clients should make periodic checks on the contractor's performance to see if the work is being done as agreed. Contractors and sub-contractors should carry out day-to-day checks to see that what should be done is being done. Some work-related accidents, diseases and dangerous occurrences have to be reported to the enforcing authorities. It is good practice to investigate all injuries, cases of work-related ill health and 'near misses' to find out what went wrong and why they were not prevented. Clients, contractors and sub-contractors should share the lessons learnt from monitoring and investigations with each other and with all the workforce.

Where health and safety requirements are not being met, the first step is for the client and the contractor to find out why and put matters right. If health and safety performance is not brought up to requirements, the client will need to stop the contractor working on the job until requirements can be met.

Use of contractors

Both the client and the contractor should review the work after completion to see if performance could be improved in future.

Key message: **Manage and supervise**

A client failed to supervise a contractor working under their control and failed to ensure that they were competent. The client also failed to control access to their substations and to issue clear instructions. Low voltage open fuseboards were inadequately shrouded and there was no formal written system for control of minor contracts. The combination of these failings resulted in an apprentice electrician being severely injured. The client was found guilty and fined £50 000 plus costs. The contractor failed to adequately control the installation of two ceiling fans in the substations and was found guilty and fined £30 000 plus costs. The experienced electrician who was supervising the activities of the apprentice electrician failed to take simple steps to prevent contact with live equipment and was found guilty and fined £1000 plus costs.

Use of contractors

HEALTH AND SAFETY LAW

The Management of Health and Safety at Work Regulations 1999 are of particular importance in any client/contractor relationship. These Regulations set out requirements for a health and safety management system in all workplaces, and the accompanying Approved Code of Practice gives advice on compliance.

Clients and contractors have legal responsibilities under health and safety regulations dealing with specific hazards (eg the Control of Substances Hazardous to Health Regulations 1999, the Control of Lead at Work Regulations 1998 and the Control of Asbestos at Work Regulations 1987).

FINDING FURTHER INFORMATION

Management of health and safety at work. Management of Health and Safety at Work Regulations 1999. Approved Code of Practice and Guidance L21 (Second edition) HSE Books 2000 ISBN 0 7176 2488 9

Managing health and safety in construction: Construction (Design and Management) Regulations 1994. Approved Code of Practice and Guidance HSG224 HSE Books 2001 ISBN 0 7176 2139 1

Five steps to risk assessment Leaflet INDG163 (rev 1) HSE Books 1998 (single copy free or priced packs of 10 ISBN 0 7176 1565 0)

Stating your business: Guidance on preparing a health and safety policy document for small firms Leaflet INDG324 HSE Books 2000 (single copy free or priced packs of 5 ISBN 0 7176 1799 8)

A guide to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 L73 (Second edition) HSE Books 1999 ISBN 0 7176 2431 5

Use of contractors

Health and safety training: What you need to know Leaflet INDG345 HSE Books 2001
(single copy free or priced packs of 15 ISBN 0 7176 2137 5)

Managing contractors: A guide for employers HSG159 HSE Books 1997
ISBN 0 7176 1196 5

Working together: Guidance on health and safety for contractors and suppliers Leaflet
INDG268(rev) HSE Books 2002 (single copy free or priced packs of 10
ISBN 0 7176 2253 3)

For further information see HSE's website at www.hse.gov.uk

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Use of contractors

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Use of contractors

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This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

This leaflet is available in priced packs of 10 from HSE Books, ISBN 0 7176 2566 4. Single free copies are also available from HSE Books.

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